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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/736,491
Filing Date: December 15, 2003
Appellant(s): MAZZARA, WILLIAM E.

Julia Church Dierker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/06/2009 appealing from the Office action mailed 06/09/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Kolls (U.S. Patent No. 6,615,186)

Muratani (U.S. Patent No. 6,119,109)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 22 – 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolls (6,615,186) in view of Muratani et al. (6,119,109).**

As per claim 22, A system for providing a telematics service to a mobile vehicle, the system comprising:

a communications unit in the mobile vehicle for connecting to a remote location ([abstract] discusses an in-vehicle device for data communications);

a response system at the remote location providing at least one promotional service as a choice to a user in the mobile vehicle (figs. 1b-j depict response systems at remote locations);

a timing unit associated with the communications unit, responsive to the response system, wherein the timing unit is configured to monitor the at least one promotional service by the user in the mobile vehicle (col. 25, lines 47 – 54; discuss a timing unit); and

means for charging the user a fee for use, occurring after the period of free use expires, of the at least one promotional service (fig. 18, block 1720 discusses charging and billing).

However, Kolls fails to explicitly disclose a period of free use.

Muratani teaches an information distribution system and billing system with the feature of a period of free use (col. 19, lines 1 – 38; discusses a charge free period).

From this teaching of Muratani, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Kolls to include the period of free use taught by Muratani, in order to provide billing service to the user.

As per claim 23, further comprising means for receiving a request for the at least one promotional service (fig. 12 depicts requesting for promotional service).

As per claim 24, further comprising a user interface operatively connected to the communications unit and configured to prompt the user of the mobile vehicle for the request (fig. 4, depicts a user interface to prompt the user).

As per claim 25, further comprising means for determining if a period of use, occurring after the period of free use expires, of a previously-received promotional service exists, wherein the timing unit is further configured to decrement the period of use of the previously-received promotional service from a user account balance (fig. 4 depicts the means for determining).

As per claim 26, further comprising:
means for determining if the connection between the communications unit and the remote location has been terminated (fig. 4 depicts the means for determining); and
if the connection has been terminated, means for determining if a period of use, occurring after the period of free use expires, of the at least one promotional service exists (fig. 4 depicts the means for determining).

As per claim 27, Kolls discloses the claimed invention but fails to explicitly disclose wherein if a period of use of the at least one promotional service exists, the timing unit is further configured to decrement the period of use of the at least one promotional service from a user account balance.

Muratani teaches an information distribution system and billing system wherein if a period of use of the at least one promotional service exists, the timing unit is further configured to decrement the period of use of the at least one promotional service from a user account balance (col. 24, lines 36 – 45; decreasing billing process times).

From this teaching of Muratani, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and method of Kolls to include the decrementing the period of use, taught by Muratani, in order to allow the customer to maintain service.

As per claim 28, further comprising means for determining if the at least one promotional service period of free use is greater than zero (fig. 4 depicts the means for determining).

As per claim 29, wherein if the at least one promotional service period of free use is not greater than zero, the system further comprises:

means for providing the at least one promotional service to the user (fig. 4 depicts the means for providing); and

means for charging a fee to the user of the mobile vehicle for a period of use of the at least one promotional service (fig. 4 depicts the means for charging).

As per claim 30, further comprising means for providing the at least one promotional service to the user for free during the period of free use (fig. 4 depicts the means for providing).

(10) Response to Argument

Appellant argues, (brief, page 11), that Kolls does not disclose or even suggest that the COM devices 100 that interconnect to the other devices in the various physical locations *provide* at least one *promotional service* to a user of the vehicle. In the examples of Kolls identified above, coupons and/or special offers may, in some instances, be considered promotional services. However, the alleged response systems of Kolls (i.e., the COM devices 100) do *not* provide the coupons and/or special offers to the user of the vehicle. Such services are instead *queried from the Internet*. Thus, Appellant respectfully submits that *Kolls fails* to teach a response system at the remote location, where the response system provides *at least one promotional service* in the mobile vehicle.

However, as stated in the final office action from June 8, 2009, the Examiner would like to point out yet another section in the prior art, fig. 18 and col. 53, line 63 – col. 54, line 6, which states, “An Internet based audio and video server routine allows a user to select music and video” which is another “promotional service as a choice to a user in the mobile vehicle” which is construed to also meet the claim. Therefore the Examiner respectfully disagrees.

Appellant further argues (brief, page 11), that Kolls does *not* disclose or even suggest that the COM devices 100 provide at least one promotional service (or any service for that matter) *as a choice* to the user of the vehicle. To reiterate from above, Kolls teaches that when the in-vehicle device 200 is in wireless proximity with a COM device 100, the vehicle *automatically* stops and communicates information to and/or from the COM device 100. Kolls does *not* teach that the user of the vehicle may choose what information is communicated to the COM device 100 and/or what information is communicated from the COM device 100 to the in-vehicle device 200.

Again, as stated in the final office action from June 8, 2009, the Examiner would like to point out yet another section in the prior art, fig. 18 and col. 53, line 63 – col. 54, line 6, which states, “An Internet based audio and video server routine allows a user to select music and video” which is another “promotional service as a choice to a user in the mobile vehicle” which is construed to also meet the claim.

Appellant argues, (brief, page 12), that Appellant fails to see how the foregoing cited portion of the Kolls reference teaches a *promotional service as a choice* to a user. As generally understood by one skilled in the art, a promotional service refers to a service devised to *publicize or advertise* a product, service, etc. in order to further the growth or development of the product, service, etc. Such is the *plain meaning* of the term as recognized by, for example, many dictionaries including the Merriam-Webster online dictionary. Appellant submits that allowing a user to select music and video (as taught in column 53, line 63 through column 54, line 6 of Kolls) does *not* in and of itself

classify the music and video as a promotional service. Such cannot be concluded at least because the Examiner's cited portion of the Kolls reference does not explicitly disclose or even allude to the fact that the music and video is a promotional product or service. At most, the cited portion of the Kolls disclosure, when taken in light of the entire Kolls reference, classifies the music and video as the product or service itself.

However, in the abstract, Kolls discloses, "Furthermore, e-commerce and e-business transactions can include interactive advertising, promotional offers, coupons, and other remote data communications." The interactive advertising and promotional offers suggest that the user is in control of the system and is able to interact. This interaction is construed as encompassing a choice. Therefore, the Examiner respectfully disagrees.

Appellant argues, (brief, page 13), that *Kolls fails* to teach a timing unit associated with the communications unit, responsive to the response system, where the timing unit is configured to *monitor* a period of free use of the at least one promotional service by the user of the vehicle. In addition to the fact that Kolls fails to disclose a period of free use (as admitted by the Examiner), the timing unit referenced in Kolls at column 25, lines 47-54 is a microcontroller having a date and time functionality that, for example, is responsive to various events. Kolls does *not* disclose that the microcontroller is configured to monitor a period of free use of a service (such as a promotional service).

The claim element states, "a timing unit associated with the communications unit, responsive to the response system, wherein the timing unit is configured to monitor a period of free use of the at least one promotional service by the user in the mobile vehicle"

The cited section of Kolls, col. 25, lines 47 – 54 recite, "Furthermore, the DS1643 or DS1743 can provide a non-volatile date and time function whereby microcontroller 130 can be responsive to or schedule events based on date and time, or date and time stamp transactions as they occur." The microcontroller timestamps transactions as they occur which is construed as monitoring. The period of free use is taught by the Muratani reference. Therefore, in combination with the Muratani reference, the elements in the claim are believed to be met. Therefore, the Examiner respectfully disagrees.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/OLUSEYE IWARERE/

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/Matthew S Gart/

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